

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

G & C FOOD DISTRIBUTORS & BROKERS, INC.

Employer

and

Case 3-RC-11542

TEAMSTERS LOCAL 317

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 9(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, and having considered the briefs submitted by the parties, I find:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The parties stipulated that G & C Food Distributors & Brokers, Inc. is a New York corporation engaged in the business of food distribution at its Syracuse, New York facility. Annually, the Employer purchases and receives at its Syracuse, New York facility goods valued in excess of \$50,000 directly from points located outside the State of New York. Based upon the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties stipulated, and I find, that Teamsters Local 317 is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 2(6) and (7), and 9(c)(1) of the Act.

ISSUE

The parties dispute whether warehousemen and mechanics should be included in a petitioned-for unit of drivers. Petitioner contends that the drivers constitute an appropriate unit. The Employer contends that drivers, warehousemen and mechanics share such a strong community of interest that all three positions must be included in the unit. I conclude that the petitioned-for unit of drivers is an appropriate unit and I shall direct an election in that unit.

FACTS

The Employer has been in business for over 30 years and employs 105 workers. The Employer, a food redistributor, purchases and receives perishable goods from packers and producers, warehouses the goods, and transports them via its fleet of trucks to its customers. The Syracuse facility is a single-location, 100,000 sq. ft. warehouse that consists of a 38,000 sq. ft. area for fresh food storage, a 38,000 sq. ft. area for frozen food storage, a 13,000 sq. ft. loading dock, and an 11,000 sq. ft. office area. The loading dock is connected to the fresh and frozen food storage areas.

The Employer employs 30 drivers, 35 warehousemen and 2 mechanics at the facility. The drivers are supervised by Sam Spuches, the operations manager. The drivers deliver goods to customers via single and tandem, refrigerated, tractor-trailer trucks. Drivers often travel up to 350 miles a day and spend the vast majority of their workday on the road. They are generally

only present at the facility to pick up and return trucks, to periodically help load and unload their trucks, or to attend meetings.

Drivers possess commercial drivers licenses (“CDLs”) and satisfy Department of Transportation (“DOT”) requirements. Warehousemen and mechanics do not possess CDLs, and they are not DOT-qualified. Unlike the warehousemen and mechanics, the drivers undergo DOT medical examinations, attend driving-specific training courses, and compete for prizes at the Employer’s annual safety rodeo. No driver has ever transferred to a warehouseman or mechanic position, and no warehouseman or mechanic has ever become a driver.¹

The Employer employs both day and night shift drivers. Day drivers start at 7:00 a.m. and usually return by 4:00 p.m. Night drivers start at 9:00 p.m. and usually return within 12 to 24 hours. The drivers are paid \$13 to \$17 per hour. They receive \$50 bonuses for driving tandem trucks or for other difficult runs. Warehousemen and mechanics do not receive these bonuses.

The 35 warehousemen at the facility receive goods at the loading dock, stock goods, retrieve goods and load goods on trucks for delivery. Day-shift warehousemen are supervised by Paul Virginia, the warehouse manager. There are 21 day warehousemen, who usually work from 7:00 a.m. to 4:00 or 5:00 p.m. Night-shift warehousemen are supervised by Thomas Schlafer, the night shipping manager. There are 14 night warehousemen, who usually start work at 6:00 p.m. and may remain until 7:00 a.m. Warehousemen are paid between \$8.75 and \$14 per hour.

¹ The record provided a solitary example of a driver, who over 11 years ago, periodically worked in the warehouse upon returning from his driving runs. No evidence was presented to establish that this was anything other than an anomaly or that this driver ever permanently transferred to a warehouseman position.

The Employer employs two mechanics, who are supervised by Robert McCann, facilities manager. Mechanics begin work at 6:00 or 7:00 a.m. and end at 4:00 or 5:00 p.m. Mechanics repair and maintain equipment at the Employer's facility, but do not repair or maintain the fleet of trucks. The fleet is leased and contractually maintained by the lessor. Mechanics are paid between \$8.75 and \$14 per hour.

David LePage, the Employer's president, has final approval on all wage, benefit, hiring, disciplinary and layoff decisions concerning the drivers, warehousemen and mechanics. Drivers, warehousemen and mechanics are offered identical health and dental benefits, paid leave (vacation, personal and holiday), long-term disability coverage, life insurance and retirement plans. Drivers, warehousemen and mechanics use the same break and lunch rooms. They attend the same quarterly company-wide meetings and forklift training sessions. They are subject to identical drug testing policies and receive periodic performance appraisals from their direct supervisors. All three classifications use the same time clock, are paid on Thursdays and earn overtime after 40 hours of work per week. Drivers, warehousemen and mechanics all wear uniforms. Drivers and mechanics wear blue pants and jackets, while warehousemen wear freezer suits.

Drivers and warehousemen have some limited contact with each other. Such contact usually occurs when trucks are being loaded and unloaded. On some occasions, warehousemen "jockey" trucks to different locations within the parking lot and in the loading dock area. While the drivers do have access to the same break and lunch rooms as the mechanics and warehousemen, they are seldom at the facility because of their driving assignments. Since the mechanics do not perform work on the trucks used by the drivers, their contact with the drivers is limited.

ANALYSIS

The petitioned-for drivers unit is appropriate. It is well-established that “the Act does not require that the unit for bargaining be the optimum, or most appropriate unit, but only an appropriate unit.” *Home Depot USA, Inc.*, 331 NLRB 1289, 1290 (2000). In determining whether a unit is appropriate, the Board evaluates whether the petitioned-for employees share a sufficient community of interest. *Id.* When evaluating community of interest, the Board gauges these factors: comparable working conditions; common supervision; similar fringe benefits; degree of skill and common functions; frequency of contact and interchange among employees; and functional integration. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). It is also well settled that there are multiple ways that employees of a given employer can be grouped for collective bargaining purposes. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-23 (4th Cir. 1963). Specifically, the Board has held that, “drivers often have a ‘dual community of interest,’ with certain factors supporting their inclusion in the same unit as other plant employees, and certain factors supporting their representation in a separate unit.” *Home Depot USA*, 331 NLRB at 1290.

A community of interest analysis demonstrates that the petitioned-for drivers unit is appropriate. While all employees receive several common fringe benefits, drivers have distinct working conditions, supervision, skills and functions, as well as a limited degree of interchange, contact and functional integration with other workers.

Drivers, and warehousemen and mechanics are subject to different working conditions. Drivers’ work time is spent on the road delivering goods to customers, while warehousemen and mechanics work exclusively at the Syracuse facility. While it is true that the drivers periodically load and unload their trucks alongside warehousemen, this function constitutes a

very small portion of their normal duties. Drivers attend meetings and training sessions related to their driving duties, while warehousemen and mechanics do not. Drivers compete in the annual driving-safety rodeos, while warehousemen and mechanics do not. Drivers are generally paid higher wages, receive driving-related bonuses and they work different hours than the warehousemen and mechanics. These significant differences in working conditions demonstrate that the drivers possess a separate community of interest. *Home Depot USA*, 331 NLRB at 1291 (finding that drivers “spend[ing] the majority of their time on the road making deliveries to other customers” demonstrates a separate community of interest); *Office Depot, Inc. v. NLRB*, 184 F.3d 506, 508 (6th Cir. 1999)(finding a separate community of interest, in part, because “[d]rivers routinely attend their own special meetings.”).

Drivers also have separate supervision from warehousemen and mechanics. Drivers are supervised by the operations manager. By contrast, the day warehousemen are supervised by the warehouse manager, night warehousemen are supervised by the night shipping manager and mechanics are supervised by the facilities manager. This separate supervision further demonstrates a separate community of interest. *Overnite Transportation Co.*, 325 NLRB 612, 612 (1998); *Overnite Transportation Co.*, 322 NLRB 347, 347-48 (1996).

Although drivers, warehousemen and mechanics receive some common fringe benefits (i.e. paid leave, overtime, health, dental, insurance and retirement), the Board has held that common fringe benefits are insufficient, in isolation, to render a separate driver unit inappropriate. *Home Depot USA*, 331 NLRB at 1289 (separate community of interest, irrespective of several common benefits); *Overnite Transportation Co.*, 322 NLRB at 347.

The drivers possess distinct skills and qualifications, and are assigned different duties. The drivers, unlike warehousemen and mechanics, possess CDLs and are DOT certified. The

drivers drive trucks to deliver product. The warehousemen store product in the warehouse, and select and load the product on the trucks at the loading dock. The mechanics maintain and repair the equipment at the facility. Thus, the drivers, warehousemen and mechanics all perform different duties. This divergence in skill and function demonstrates that the drivers have a separate community of interest. *Home Depot USA*, 331 NLRB at 1289, 1291; *Novato Disposal Services, Inc.*, 330 NLRB 632, 632-33 (2000); *Overnite Transportation Co.*, 322 NLRB at 347.

There is limited interchange, contact and functional integration between the drivers, warehousemen and mechanics. Given that drivers spend most of their day on the road, they necessarily have limited contact with warehousemen and mechanics. Drivers do not transfer into either warehousemen or mechanic jobs, and the warehousemen and mechanics do not transfer into driver positions. Although all employees are required to attend some company-wide meetings and functions, these meetings are infrequent and provide nothing more than sporadic employee contact. Drivers, mechanics and warehousemen seldom work side-by-side. This infrequency of contact and interchange, and lack of functional integration, further demonstrates that the drivers have a separate community of interest. *Home Depot USA*, 331 NLRB at 1291; *Overnite Transportation Co.*, 322 NLRB at 347.

Although the Employer cites *NAPA Columbus Parts Co.*, 269 NLRB 1052 (1984), in support of its contention that the drivers, warehousemen and mechanics share such a strong community of interest that they must be included in the same unit, the Employer's reliance on *NAPA Columbus* is misplaced. First, the Board expressly overruled *NAPA Columbus* in *A. Russo & Sons, Inc.*, 329 NLRB 402, 402 (1999). Moreover, the facts in *NAPA Columbus* pertaining to the community of interest analysis of the drivers and warehousemen, are clearly distinguishable from the facts in the instant case. In *Napa Columbus*, the disputed drivers were found to share

an overwhelming community of interest with the warehousemen. The drivers and warehousemen shared identical fringe benefits and immediate supervision. They worked with each other for approximately 1.5 hours per day and the drivers performed warehousemen duties on the road. Ninety percent of the drivers had previously been warehousemen and they regularly substituted for each other during the workday. The drivers operated small delivery trucks that warehousemen were also generally qualified to operate, and drivers were not required to have CDLs. Unlike the *NAPA Columbus* drivers, the drivers herein have limited daily contact with warehousemen, have different immediate supervision, do not perform warehousemen duties on the road, were not previously warehousemen, do not regularly substitute for warehousemen, and must possess CDLs. Accordingly, *NAPA Columbus* is inapplicable, as it has been overruled, and is, in any event, factually distinguishable from the instant case.

CONCLUSION

Based upon the foregoing, I find that the petitioned-for drivers possess a distinct community of interest and constitute an appropriate unit. While all employees are provided some common fringe benefits, the drivers nevertheless have distinct working conditions, supervision, skills and functions, as well as a limited degree of interchange, contact and integration with the warehousemen and mechanics. *Home Depot USA*, 331 NLRB at 1291 (separate drivers unit found appropriate where drivers possessed special driving qualifications and licensing, were mostly on the road, had limited contact with other employees, and there was limited interchange of drivers and other employees); *Office Depot*, 184 F.3d at 508 (separate drivers unit found appropriate where drivers were mostly on the road, held special licenses, received special training, attended their own meetings and rarely performed non-driver work.)

APPROPRIATE UNIT

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time truck drivers employed by the Employer at its Syracuse, New York facility; excluding warehouse workers, warehouse mechanics, sales persons, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

There are 30 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local 317**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received at the Buffalo Regional Office, Room 901, Thaddeus J. Dulski Federal Building, 111 West Huron Street, Buffalo, New York 14202 on or before **March 30, 2005**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. The Board in Washington must receive this request by **April 6, 2005**.

DATED at Buffalo, New York this 23rd day of March 2005.

/s/Helen E. Marsh
HELEN E. MARSH, Regional Director
National Labor Relations Board – Region 3
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